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GOVERNMENT'S ROLE IN PRICING FLUID MILK IN THE UNITED STATES

INDEX

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GOVERNMENT'S ROLE IN PRICING FLUID MILK IN THE UNITED STATES 1/

Judge Jerome Frank once said in a decision relating to milk, "The city-dweller or poet who regards the cow as a symbol of bucolic serenity is indeed naive. From the udders of that placid animal flows a bland liquid indispensable to human health but often provoking as much human strife and nastiness as strong alcoholic beverages . . . the domestication of milk has not been accompanied by a successful domestication of some of the meaner human impulses."

This quotation illustrates the difficulty in achieving reasonable equality of bargaining power between producers and milk dealers without governmental participation under mandate of law and the requirements of due process. Dairy farmers produce a highly perishable and unstorable product. Output varies within the year, but demand changes are not parallel. Fluid milk must be delivered to market regularly, and consequently it is marketed within a highly organized, unique, and, perhaps in some cases, a somewhat rigid marketing system. Neither supply or sales of milk is highly responsive to price changes, or susceptible of control in response to any stimulus. These circumstances make dairy farmers especially subject to violent intraseasonal changes in price of milk and net income. Thus they especially need programs that help them overcome an intrinsic lack of bargaining position, and since milk is an important and necessary part of our daily food supply, the Congress, State legislatures and Courts have held that the public interest is served by such programs.

Milk production varies from day to day; seasonally, it varies even more widely. Demand also varies from day to day and seasonally. Because of perishability, fresh milk supplies cannot be stored to achieve a balance with demand. Fluid milk markets, therefore, must inevitably have a daily and seasonal reserve of milk to make sure that the supply will always be sufficient for requirements. If there is to be an adequate supply, there has to be a continuous reserve, which, when not needed for fluid use, must be converted into manufactured dairy products. Milk used in manufactured products returns a lower price to producers than that used for fluid purposes.

Enactment in the 1920's of more stringent sanitary regulations for fluid milk contributed to the problems faced by dairy farmers. To cope with the intricate problems of milk marketing and strengthen their bargaining position, producers expanded their cooperative organizations and developed the techniques of classified pricing and pooling producer returns. During the widespread depression of the early 1930's producers' milk prices declined sharply in all markets, including those served by cooperatives.

These are the basic conditions which gave rise to early requests for legislation and government participation to improve marketing conditions in fluid milk markets.

Government participation in pricing fluid milk was widely inaugurated in the early 1930's. A number of States enacted legislation to stabilize milk markets in an attempt to raise milk prices. The Federal Government entered fluid milk pricing following passage of the Agricultural Adjustment Act of 1933.

The system of Federal milk orders has been steadily expanding for more than a quarter century. There were 17 milk orders in 1940, and in 1950, there were 39. By

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1/ This report is the result of a joint study by ERS and CMS, under the general direction of A. G. Mathis, ERS. The sections on State milk control regulation and regulating sales below cost were prepared by G. B. McIntire, CMS; that on Federal orders by J. Toomey, CMS, with substantial contributions by several other members of the Dairy Division, CMS.

1962, the number had increased to 83. Consolidation of several orders and termination of 2 orders reduced the number to 76 on March 1, 1965. As of this date, 20 States had laws authorizing the establishment of milk prices. 2/

In addition, a number of States without milk control laws are indirectly affecting milk prices through regulation of such trade practices as those relating to selling products below cost, price discrimination, granting discounts, or rebates. Most States with milk pricing regulations regulate trade practices to obtain compliance with resale prices. In recent sessions of some State Legislatures, bills were introduced to establish agencies for directly regulating milk prices or regulating trade practices.

Dynamic changes in the production and marketing of milk are responsible for increased demand by producers and other elements in the dairy industry for government participation in milk pricing. The changes that affect marketing are both institutional and economic. Institutional changes consist primarily of the decrease in number of distributing firms involved in fluid milk handling and increased size of firms. Accompanying these changes has been an increase in the size of producer owned and operated cooperative marketing associations. Some expanded by internal growth or by merging and consolidating; others, which operated no plant or only manufacturing plants, expanded into fluid milk distribution.

Many economic changes in milk marketing begin as technological developments. Examples are more efficient producing and handling milk on farms, and perhaps even more important, improved facilities for handling and trucking milk from farms to processing plants and finally to consumers. Such developments have broadened individual market areas and have increased competition from different points of production and consumption. Much movement of milk to fluid markets now involves more than one State. Growth of interstate movement has increased demand for Federal orders, since an individual State cannot regulate milk which comes from outside its borders. By the same token, while orders are still established and maintained for separate marketing areas, the increased mobility of milk requires increased attention to regional and national conditions in developing the provisions of an order.

Federal authority for the regulation of milk handling and participation in the price-determining process was first provided in the Agricultural Adjustment Act of 1933. The Agricultural Adjustment Act of 1935 expanded and made more explicit the Department's authority to fix minimum prices for milk. Current Federal orders, however, are based on Agricultural Marketing Agreement Act of 1937, as amended. This act reenacted the 1935 legislation which spelled out in detail the general authority granted in the 1933 legislation. The authority for regulating milk prices in an individual State is, of course, the State law. Twenty States have regulations establishing milk prices. Under these laws producer prices are fixed in the 20 States, and resale prices are established in 14. Seventeen of these States regulate trade practices. Nine additional States regulate sales below cost and, in the course of this activity, are concerned with trade practices.

The influence of Federal and State milk pricing activities goes well beyond the areas actually controlled. About 90 percent of the milk meeting the sanitary eligibility standards for fluid use is priced under either Federal milk orders or State milk control laws. However, fluid milk prices in many markets not covered by Federal or State measures are influenced by prices established in areas under government control.

2/ Puerto Rico also regulates producer and resale prices of fluid milk.

FEDERAL MILK MARKETING ORDERS

A Federal milk marketing order is a legal instrument issued to apply to a specified area. An order requires milk dealers (usually called handlers) to pay certain minimum prices for different use classifications and to observe certain terms of sale with respect to milk purchased from milk producers. Although orders are issued primarily to establish minimum prices to producers, only milk handlers are regulated under a Federal order. The handlers are directed to pay producers not less than minimum prices established in the order and to comply with rules for handling milk in the market. Wholesale and retail prices for fluid milk, unless prescribed by State authority, are established through competition among handlers.

Milk delivered from farms and sold for fluid use (Class I) is priced on the basis of supply-demand conditions in the regulated marketing area. Prices for Class I milk are established at levels which will assure an adequate supply of pure and wholesome milk to consumers. Milk not utilized for fluid purposes is priced at levels which approximate the value of milk used in manufactured dairy products, such as butter and cheese. Farmers receive a "blend" or "uniform" price for milk, which reflects the proportion utilized in different outlets as well as price levels in those outlets. Blend prices vary among marketing areas, depending upon production and marketing conditions in the various areas and among handlers in markets with individual-handler pooling.

Since Class I prices are designed to reflect current supply and demand conditions in each regulated market and since such conditions vary over time, federal milk orders generally do not provide a fixed level of Class I price or a fixed level for the price of any other class for any period. Minimum prices are established by formulas for each class. These formulas provide the means for varying the class prices in response to changing economic conditions. In order to account for important influences on supply and demand conditions in regulated markets, it is necessary to establish class prices in appropriate relationship with prices in other markets as well as with the general level of prices for milk for manufacturing. Generally, Class I prices are lowest in the heavy milk-producing areas of Wisconsin and Minnesota. Prices in other areas tend to fall in a general pattern. They increase in relation to the distance of the market from the heavy producing areas by an amount approximating the cost of transportation from Minnesota or Wisconsin. This general pattern of milk prices is affected by local concentrations of supply in certain areas.

Federal milk orders do not control production, except through price, or restrict the marketing of milk by farmers. They do not establish sanitary regulations applicable to milk sold in fluid markets. Sanitary regulations are administered by State and local health authorities.

Procedure for Developing a Federal Order

A number of steps are involved in instituting a marketing order for a milk market. At least several months are required to complete the process. Steps are as follows: (1) Action usually is initiated by cooperative associations of milk producers. This action usually takes the form of a petition to the U. S. Secretary of Agriculture. (2) Upon receipt of petition, accompanied by a proposed order, a preliminary investigation is undertaken to determine whether an order might effectuate the purpose of the Act, whether an order would receive sufficient producer support and whether proponents have information and resources for proceeding to a hearing. (3) If it is decided to proceed, counterproposals are invited, then a notice of public hearing, including the proposed order and other proposals, is issued and published in the Federal Register. Simultaneously with this filing, a press release summary is issued by the U. S. Department of Agriculture. A copy of the notice of hearing is mailed to Governors of each

State which would be affected by the proposed order and to other persons known to be interested. (4) At the hearing, all interested parties are given an opportunity to present facts and opinions relative to (a) interstate aspects of commerce in milk in the marketing area, (b) the need or desirability for an order, and (c) specific terms of any order which might be issued. (5) Based on testimony at the hearing, a Recommended Decision and Order is developed and issued. 3/ These documents are published in the Federal Register. (6) A period of time, usually 15-30 days, is allowed for examining the proposal and filing exceptions. (7) These exceptions are considered, and changes are made as deemed necessary or desirable. (8) The final decision and final order are issued by the Secretary and published in the Federal Register. (9) The order becomes effective at a date specified by the Secretary, after approval by at least two-thirds of the producers supplying milk for the area (if the order provides for individual handler pools, by three-fourths of the producers) during a representative period prior to issuance of the final order. The legislation provides that a milk producers' cooperative may vote all its members who deliver milk for or against a proposal.

Orders usually are amended in the same manner as the original orders are developed and issued. To cope with emergency situations, orders are sometimes suspended, in whole or in part. An order must be terminated at the request of more than 50 percent of producers supplying more than 50 percent of the milk for the market, or by the Secretary if he finds the order no longer carries out the purposes of the Act.

Administration of Federal Milk Orders

After a Federal milk order has been developed, a market administrator is appointed by the Secretary of Agriculture. The market administrator and his staff: (1) Calculate and announce minimum prices in accordance with order provisions; (2) collect reports from handlers showing quantities of milk received and used in each product or use; and (3) receive payroll reports showing actual payments by each handler. One of the most important functions of the market administrator is verification of reports made by handlers. Auditors and dairy technologists perform the verification function. Expenses of the market administrator's office are paid from funds obtained by assessing handlers a specified rate per hundredweight of milk handled. This rate varies among markets. In addition, most market administrators verify weights and butterfat tests and provide marketing information to producers not members of cooperative associations which perform such marketing services. Nonmember producers pay for marketing services provided them.

Pricing Systems Established by Federal Orders

The Marketing Agreement Act requires the Secretary of Agriculture to employ the "classified use" basis when establishing minimum prices paid to producers. Milk used for fluid purposes in a regulated marketing area is placed in Class I, the highest price class. In most markets, cream for fluid use also is in this category. Milk utilized in manufactured products is placed in lower price classes. The classification procedure depends on local market circumstances, and varies among different orders.

Class I fluid uses generally include fluid whole milk, modified milk products, such as flavored drinks, buttermilk and concentrated milk, and other fluid products or uses for which Grade A milk is required by health departments.

Milk supply and demand conditions are the basis for establishing Class I prices under the Federal order program. The "prices of feed, the available supply of feed,

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3/ Testimony may result in a Recommended Decision for no order.

and other economic conditions" referred to in the Agricultural Marketing Agreement Act are taken into account as they affect prospective market supply and demand conditions. Formula pricing plans have been developed as a means of establishing and maintaining class prices in accordance with these objectives.

Two types of Class I pricing formulas are used. One type bases Class I prices of the average price paid producers for manufacturing grade milk in the heavy producing areas of Minnesota and Wisconsin plus a differential. The differential varies in accordance with production and marketing conditions in the local area. It represents basically the amount over manufacturing values needed to provide an adequate supply of pure and wholesome milk in the marketing area. The size of the differential is influenced by numerous factors affecting supply and demand, including the price at which milk may be procured from other areas. The example in table 1 shows for the Chicago market the mechanics of this type of formula.

The other type of Class I pricing formula is the so-called economic type formula. This method was first adopted in 1948 in the Boston market now included in the Massachusetts - Rhode Island marketing order. The price established by this formula related fluid milk prices to selected general economic indicators. This type of formula now is in operation in the Northeastern markets. In New England markets, these factors relate the milk price to certain items of production cost, to changes in per capita disposable income in New England, and to changes in the general level of wholesale prices-the BLS index covering nearly 2,000 commodities. The application of this type of formula to the Massachusetts-Rhode Island market is illustrated in table 2. In table 3, markets are classified by type of formula employed.

Three methods are used to establish surplus class prices. One is to use market prices of manufactured dairy products and to use yield factors and processing allowances to build up a whole milk price. A second method is to use prices paid for milk at manufacturing plants in or near the supply area of the regulated market. A third method-one being increasingly adopted-is the use of a competitive pay price which has a broader base than local plant prices. Two price series are used as a measure of a broader competitive pay price. The U. S. manufacturing milk price series is now used or included as an alternative in the manufacturing class pricing formula of 11 markets. The Minnesota-Wisconsin price series was being used in about one-third of the Federal order markets on April 1, 1965, and was being considered for use in several other Federal order markets.

The use of formulas in pricing milk constituted a step forward in adjusting prices to reflect changes in supply and demand conditions. Formulas reduce the need for a hearing to establish a new level of milk price when conditions change.

Developments in the production of milk and marketing conditions, however, often require adjustment in pricing formulas. Such adjustments can be made through amending pricing provisions on the basis of evidence at a public hearing. The amendment process is time consuming and sometimes would not permit adjustments rapidly enough to reflect a change in the supply-demand situation. To make Class I pricing formulas more responsive to changing conditions, most of them include an automatic supply-demand adjustment. This is an adjustment which automatically reduces the Class I price when supplies become excessive relative to current demand and raises the Class I price when supplies decline relative to demand.

Producers receive an average or blend price based on the total value of their milk deliveries. The total value of milk received from producers is determined by multiplying the quantity of milk in each class by the respective class prices. The total value of all milk is divided by the total pounds of milk received from dairy farmers to

obtain the uniform or blend price payable to an individual farmer. The uniform price may be computed separately for each handler or it may be averaged for all handlers in the market, depending on whether the market operates in an individual-handler pool or a marketwide pool.

Under a marketwide pool, there is an equalization device known as the "producer settlement fund." It operates so each handler is debited for the total value of milk he received from producers at class prices according to its use. To determine an average price, the total value of milk bought by all handlers is divided by the total quantity of milk delivered by producers. The handler is then credited in the fund at this average price, which he is required to pay to producers delivering milk to him. The handler pays into or receives from the fund the difference between the value of his milk at class prices on the basis of his utilization and the value at the blend price based on marketwide utilization. This equilization pool results in all handlers paying the same minimum prices for milk in each use classification and all producers receiving the same uniform price, as a minimum.

A problem in pricing milk results from the fact that seasonal variation in milk production traditionally is greater than seasonal variation in demand. Several plans have been designed and used to obtain a more even production of milk--a production pattern that more nearly matches the pattern of demand.

The earliest plan employed under Federal orders was the base-excess approach, used long before the advent of Federal orders. Under this plan the producer establishes a production base for his farm. This base usually is established during months of seasonally low production. He is paid base price for deliveries up to his established base. For quantities in excess of base, he receives a lower price. Seasonal variation in Class I prices also is used to encourage more even seasonal milk production. Under this method Class I prices are established at higher levels in low production months than in high production months. Another pricing procedure to encourage more even seasonal production is the so-called "Louisville Plan." Under this arrangement, payments are witheld from producers according to total deliveries by producers in the flush season and repaid according to total deliveries in the short-supply season. Table 4 indicates which plan or combination of the 3 seasonal production incentive plans--base-excess, seasonal variation in Class 1 prices, or "Louisville plan"-- is provided in each Federal order.

Relationship of Minimum Order Prices to Support Prices

All but 7 of the Federal orders derive their Class I price from the value of milk for manufacturing--the Minnesota-Wisconsin price series. All surplus class prices are based on manufacturing milk values or the prices of manufactured dairy products. The Minnesota-Wisconsin price is determined by competitive conditions in a 2-State area where about one half of the milk for manufacturing is produced. The price support level for manufacturing grade milk directly affects the Minnesota-Wisconsin manufacturing grade milk price series and prices for manufactured dairy products. Minimum order class prices, as well as blend prices to producers thus are responsive to changes in the level of support prices.

Significant Trends in Federal Order Markets

The fluid milk industry has changed dramatically since inception of the Federal milk order program. Accordingly, the order program has had to remain flexible to achieve the basic purpose of the enabling act-orderly milk marketing in the public inerest.

Prior to World War II, fluid milk markets were relatively well defined and local. Fluid milk--then as now--was bulky and perishable. While the Nation's population centers were not isolated, technology in milk collection, processing, and distribution was such that a distributor's fluid milk sales area generally was confined to a single urban area. Thus, each fluid milk market was to some extent sheltered from milk supply-demand situations in other markets. However, the marketing situation has changed considerably in recent years.

Milk can now move directly from the farm via large bulk tank trucks over superhighways to formerly distant markets. For example, in November 1964, bulk milk was shipped from plants in the Madison, Wisconsin, area to 15 States. In addition, processing and packaging technology, along with increased distribution through stores, has led to the establishment of centralized bottling and distribution plants serving several markets. Economies of scale associated with such operations more than offset additional transportation costs.

Because of this ever-widening pattern of distribution, Federal order marketing areas have been expanded, and former separate orders have been merged. During 1961-64, 12 order areas were consolidated into 5 new areas, and 23 marketing areas were expanded.

Handlers have expanded their operations to take advantage of improved transportation and refrigeration facilities which make large distribution areas feasible. Also, improvements in milk processing and packaging equipment make it possible for plants to handle greater volume. The number of handlers in Federal order markets has decreased as their size has increased. In December 1964 there were 2,008 handlers in Federal order markets, and producer deliveries were 4.5 billion pounds. In December 1961 there were 2,314 handlers, and producers deliveries were 4.2 billion pounds.

The number of producers supplying Federal milk orders has decreased in recent years, but this has been offset by an increase in the milk deliveries per producer. The average daily delivery per producer in 1964 was about 265 percent of the average delivery in 1950--886 pounds compared with 336 pounds.

During 1964, 167,990 producers delivered 54.4 billion pounds of milk to Federal order handlers, about half of all the milk sold to plants and dealers in the nation. The total farm value of the Federal order producer deliveries was $2.3 billion. In 1950, 18.7 billion pounds of milk were received by handlers regulated by Federal orders, 25.1 percent of all milk sold.

A number of features of Federal milk orders are often overlooked. These features, however, have contributed much to the success of the program. (1) The hearing procedure, which provides opportunity for all parties to be heard in the formulation of marketing terms; (2) the existence of a professional staff to appraise industry proposals and develop pricing and regulatory provisions on the basis of a broad knowledge of milk marketing; (3) price decisions are made in the public interest by a public agency; (4) enforcement of marketing rules in accordance with order provisions; (5)development of a large body of statistical information concerning market supplies, demand, price, and movement of milk.

STATE MILK CONTROL PROGRAMS

Problems encountered by State milk control agencies in establishing producer prices are similar to those faced by officials of the Federal Government in administering Federal milk orders. One important difference is that the State has authority to

establish producers' milk prices and resale prices only within the State. On the other hand, for a market to qualify for a Federal order, there must be interstate implications of the pricing action.

Central Features of State Milk Control Programs

For most States, the following summaries and tables 8 and 9 were based jointly on replies to a letter and questionnaire and copies of the State laws. For other States, the summaries are based entirely on available copies of the law and regulations. For actual use, it would be desirable to check with the legal official serving the milk control authority in the State concerned. This kind of information has been requested from many sources, especially in States where new milk control legislation is being considered.

The objectives of milk control legislation are stated in various ways in the laws of individual States, but practically all state the provision of an adequate supply of wholesome milk to be a major objective; several specifically give public interest. It is apparent that the laws still in force have been based on the States' responsibility to provide for the public interest.

Stabilized or orderly marketing is an objective in about 2/3 of the laws, and regulation of fair trade practices is cited in nearly half. Benefit to farmers through fair prices, fostering intelligent production, etc., is the third major aim of State control legislation. A fair and reasonable price for farmers is mentioned as an objective more frequently than reasonable (or controlled) consumer price. Only two laws specifically give fair prices for distributors as a goal.

All State control agencies have authority to require licensing of distributors and to require licenses for specific marketing areas. In markets where there are joint Federal-State orders such as in New York and New Jersey, the licensing power of the States strengthens enforcement. Only 4 States--Alabama, Florida, Georgia, and Montana--require licensing producers; 2 States--California, and Nevada--require registration of producers. Power to investigate and to inspect and audit (Vermont is the only exception to the audit authority) is vested in all control agencies, as is power to require records and periodic reports. In most States, control agencies do not check-test; however, in all cases, the agencies require permits or licenses for milk testing, inspect or certify the testing equipment, or both.

In several States without State regulation of producers' milk prices, legislation is being considered to establish State testing, weighing, and auditing services in areas not already serviced by Federal milk marketing orders.

ALABAMA

Standards for Establishing Price

In establishing producer and resale prices the Milk Control Board considers the balance between production and consumption of milk, the cost of production and distribution in the marketing of milk (both retail and wholesale), and the purchasing power of consumers in the localities and markets of the State. Before fixing prices based on handling, processing, or transportation costs, the Board holds public hearings in the milkshed and hears relevant evidence.

Regulation of Fair Trade Practices

The Alabama Milk Control Board has issued "Seventeen Rules of Fair Trade Practices," The provisions prohibit false and misleading advertising or the misrepresen-

tation of dairy products; forbid giving anything of monetary value, either directly or indirectly, with the purchase or sale of milk or milk products; regulate the donation of free samples; set forth rules regulating a producer quota program; protect the quality of the products offered for sale and the service provided; and provide procedures for transactions between producers, producer-distributors, and distributors.

Source of Funds for Administration

Funds for administering the control program are obtained by assessments on stores--$2.50 per year for each store operated--and on a per hundredweight basis for producers, distributors, producer-distributors, subdistributors, and cooperative marketing associations selling milk.

Marketing Areas and Percentage of Milk Regulated

The State is divided into 3 separate milksheds--the Consolidated Shed, Industrial Shed, and Southern Shed.

Approximately 82 percent of the milk purchased from producers in the State for bottling, and all milk so utilized in Alabama, is under regulation.

New Legislation and Litigation

The Milk Control Law was not amended in the 1963 Alabama regular legislative session. However, changes in official orders and regulations, price schedules, resolutions, definitions, producer quotas, and rules of fair trade practices are contained in the "Digest of the Alabama Milk Control Board". This revised and amended an earlier compilation of the Board's rules and regulations. On several occasions the Board has successfully defended its classified price schedules before State Circuit Courts.

CALIFORNIA

Standards for Establishing Prices

Minimum prices to producers must be in a reasonable and sound economic relationship with the price of manufacturing milk, considering the additional costs of producing and marketing fluid milk, and the current and prospective supply and demand for fluid milk. The Director of the Department of Agriculture must find that such prices will insure consumers an adequate and continuous supply of wholesome milk and cream at fair and reasonable prices. In determining minimum wholesale and retail prices for fluid milk (and fluid cream), the following factors are considered: The quantity distributed; consumption; purchasing power of consumers; costs to distributors and retail stores; cost of handling; return on capital investment; amount of available capacity for processing and distributing fluid milk and fluid cream; and amount of quantity discounts (wholesale and retail) in effective price schedules. All stabilization and marketing plans for fluid milk prescribe minimum prices to be paid by distributors for fluid cream, fluid skim milk, milk, or milkfat or fluid skim milk components of such fluid milk. Minimum prices paid by distributors for Class I usage of fluid milk are on a milkfat and milk solids-not-fat basis. California is the first State to prescribe pricing of fluid milk and cream on a fat and solids-not-fat basis.

Regulation of Fair Trade Practices

Such provisions in the California Agricultural Code in general relate to sales below cost, free gifts to obtain the dairy products business of a customer or consumer, supplying refrigeration facilities or advertising allowances or materials to wholesale customers, price discrimination, secret rebates or unearned discounts, and contract requirements between producers and distributors of fluid milk.

The Bureau of Milk Stabilization on February 10, 1965, released an amended set of "Rules and Regulations Pertaining to the Marketing of Milk and Other Dairy Products, Effective March 1, 1965." The changes include regulations that prohibit sales of milk and other dairy products by distributors to Federal agencies at prices below cost; permit the combining of sales of imitation ice cream and ice cream for establishing wholesale quantity discounts; and prohibit special discounts by distributors to "claim accounts" unless an actual costs saving was involved in serving the account.

Marketing Areas and Percentage of Milk Regulated

California is divided into 20 milk marketing areas in which minimum producer prices are established. Several areas have a uniform producer price but are divided into different resale price zones. The 20 marketing areas are divided into 34 resale price zones. About 98 percent of the milk produced in the State is priced under State regulations at the producer level. Approximately 6 percent of all fluid milk is resold to agencies of the Federal Government and is not subject to resale price regulation. Resale prices for about 98 percent of all other fluid milk sales are established under State regulation.

Sources of Funds for Administration

The program is financed by an assessment on producers of 3 mills per pound of milkfat marketed. An equal amount is levied on distributors. In addition, an assessment of 4 mills per gallon is levied on the manufacture of ice cream mix and ice milk mix. When distributors do not purchase or receive fluid milk in milkfat pounds, 10 1/2 mills for each 10 gallons of fluid milk is the maximum assessment.

New Legislation and Litigation

The 1963 State Legislature provided permissive authority for handler pools . . . . "that fluid milk, or fluid cream, or both, that is received from producers by milk product plants under the same ownership may be pooled for purposes of payment to producers."

The First Appellate Court of California (in Emby Foods, Inc. et al, V. Charles Paul) on November 18, 1964, upheld the authority of the Director of Agriculture to maintain higher minimum prices for milk at retail stores than at milk depots. Milk depots (cash and carry milk drive-ins) are primarily at processing plants and dairy ranches where milk is sold to consumers.

FLORIDA

Standards for Establishing Prices

Surveys of the cost of milk production are made periodically, at the direction of the Commission, by certified public accountants as a basis for establishing a producer price. The Commission does not establish resale prices at any level.

Regulation of Fair Trade Practices

A Fair Trade Practice Order, made effective by the Milk Commission in January 1961, was rescinded on June 1, 1964.

Source of Funds for Administration

A tax of 1.5 mills per gallon is paid by both producers and distributors on Class I milk only.

Marketing Areas and Percentage of Milk Regulated

The State-controlled areas as of December 10, 1964, were: (1) Pensacola Area--4 counties in the extreme northwest section of the State. (2) Tallahassee Area--16 counties in the north central part of the State. (3) Northeast Area--14 counties east of the Suwannee River to the vicinity of Jacksonville. (4) Central Area--11 counties, exclusive of Hernando, Pasco, Hillsborough, and Pinellas counties.

Prior to December 10, 1964, the State milk regulation had covered 60.2 percent of milk sold to plants, but regulated milk fell to 38.5 percent after the withdrawal of the Tampa Bay Area from regulation.

New Legislation and Litigation

There has been no new legislation since 1963.

The Florida Milk Commission was involved in several court cases whereby Florida producers sought to obtain allocation of all of their milk to Class I usage before out-of-State milk could be allocated to Class I, while the distributors wanted to use out-of-State milk without restraint. An important case was Polar Ice Cream Co. v. Andrews. (See page 59.)

GEORGIA

Standard for Establishing Prices

Economic formulas are used in determining the producer price and the distributor margin; a combination of the two is the resale price. The "Producer Price Index" is the weighted average of U. S. wholesale prices for nonfarm commodities, index of Georgia per capita income, and feed-labor index. The "Distributor Cost Index" also includes the labor cost index for food, container cost index, chemical supply cost index, equipment cost index, and motor vehicles cost index.

Regulation of Fair Trade Practices

Order regulations indirectly create fair trade practices that regulate terms and conditions under which milk is marketed. Some prohibited practices are: Furnishing special services, equipment, dairy products, and merchandising gimmicks; give-away, or tie-in sales, or schemes involving discounts, rebates, trading stamps, bonuses, and premiums; donating of milk to a charitable, educational, or nonprofit organization; and payment of anything of value to a licensed producer for services.

Marketing Areas and Percentage of Milk Regulated

The 73 marketing areas in Georgia are designated as milksheds. They include 8 countywide sheds and 4 multiple towns. The remaining 61 milksheds are scattered

throughout the State. The Georgia Milk Commission controls approximately 98 percent of the milk marketed by farmers and sold in the State.

Source of Funds for Administration

This program is financed by an assessment of 2 cents per hundredweight on both producers and distributors.

LOUISIANA

Standards for Establishing Prices

Prices are established to benefit the public, protect the dairy industry of the State, and insure a sufficient quantity of pure and wholesome milk. The Commissioner of Agriculture, in determining minimum producer price levels, considers the quantity of fluid milk produced and sold, the cost of dairy feed, farm labor, and other economic conditions affecting the production and sale of milk in the area.

The Milk Commission establishes resale prices, based on representatative cost data, which assure sufficient quantities of pure and wholesome milk, milk products, and frozen desserts.

Regulation of Fair Trade Practices

Provisions which give the Milk Commission authority to regulate prices at the wholesale level refer to rebates and discounts, advertising allowances, purchasing space in the dairy case, gifts of equipment and other things of value, furnishing signs with the name of the retailer, loans, and other financial assistance such as credit terms, free repairs, or other services.

Marketing Areas and Percentage of Milk Regulated

The Commissioner of Agriculture has divided the State into 2 producer pricing and marketing areas, while the Louisiana Milk Commission has divided the State into 5 "Commission Sales Areas" for wholesale and retail price levels.

All milk purchased from producers in the State is regulated, and all fluid milk sold in the State is priced under State regulations, except milk sold to Federal installations.

Source of Funds for Administration

The Milk Commission obtains funds for administration of resale pricing by assessing milk processors 2 cents per hundredweight of milk. The Commissioner of Agriculture obtains funds for producer-price regulation by assessing both producers and processors 1 cent per hundredweight of milk.

New Legislation and Litigation

When the Milk Commission was created in 1962, the statute contained a provision to automatically terminate the Commission on July 1, 1966. This clause was removed by the Legislature in 1964.

The Commission is authorized to establish minimum wholesale prices on frozen desserts. A hearing has been held, and a price order relative to frozen desserts likely will become effective in 1965.

MAINE

Basic Standards for Establishing Prices

The law provides for just and reasonable prices, considering public health and welfare and insuring an adequate supply of pure and wholesome milk to the inhabitants of the State, under varying conditions in various marketing areas, seasonality of production and other conditions affecting costs of production, transportation, and marketing in the milk industry, including a reasonable return to producer and dealer.

Regulation of Fair Trade Practices

An important part of the Maine Milk Commssion's regulatory program is a fair trade practice regulation governing the purchase, distribution, and sale of milk, and providing that no method or device shall be used that makes possible the sale or purchase of milk at less than scheduled minimum prices, whether this be by rebate, discount, gratuity, advertising allowance, fee service, combination price for milk with other commodities, or for any other consideration.

Marketing Areas and Percentage of Milk Regulated

The Commission regulates minimum prices at both production and resale levels in 2 zones comprised of 47 marketing areas. Approximately 90 percent of the fluid milk sold for consumption within the State is priced under State regulations. Of the total milk sold to plants by Maine producers, 55 percent remains within the State, and 45 percent finds its way into northeastern Federal order markets, all in other States.

Source of Funds for Administration

The Maine Milk Commission is entirely industry-supported, with each dealer paying an annual license fee of $1.00 and 1.5 cents per hundredweight of all milk purchased, produced, or sold. Three-quarter cent per hundredweight may be deducted by dealers from amounts paid by them to producers of such milk.

New Legislation and Litigation

No material changes in the Maine Milk Commission law have been made in recent years, except an increase in assessments per hundredweight used for the administration of the program.

The Commission presently is in litigation, with decisions on 7 cases pending in the State Supreme Judicial Court. Primary among these cases is the question of constitutionality of the milk control legislation.

MASSACHUSETTS

Standards for Establishing Prices

In determining the reasonableness of prices, the Milk Control Commission is guided by costs of production, hauling, handling, processing, storage, distribution, and other costs of milk production and marketing; by the balance between supply and demand; by consumers purchasing power; and by other economic conditions affecting milk supply and demand for milk, including reasonable returns to producers and to milk dealers.

Regulation of Fair Trade Practices

The Massachusetts Milk Law prohibits certain practices, such as dealers' sale or distribution of milk acquired below cost; sales below the minimum price; use of any method or device whereby milk is purchased, sold, or distributed at a price less than the applicable price by discount, rebate, free service, or advertising allowance. Cooperatives are not allowed to sell milk at less than the minimum price. The practice causing the major enforcement activity is use of milk as a loss-leader.

Marketing Areas and Percentage of Milk Regulated

Massachusetts is divided into 23 milk marketing areas; 5 are regulated as to producer price by a Federal milk market order. The Commonwealth's orders establish producer prices for about 10 percent of the fluid milk distributed in the State. Rules, regulations, and orders of the Commission covering price stabilization and below-cost sales are in effect in all areas of the Commonwealth and are applicable to all milk dealers.

Source of Funds for Administration

License fees and assessments are paid by dealers. By law, the dealer must deduct from his producers one-half of any assessment he pays. The present assessment rates are $0.012 per hundredweight of Class I (fluid milk) sales in Federal order markets and $0.02 per hundredweight in State order markets.

MISSISSIPPI

Standards for Establishing Prices

The Commission takes into consideration the balance between production and consumption of milk; the cost of production and distribution in the marketing of milk, both wholesale and retail; and the purchasing power of the consuming public in the various localities and markets.

Regulation of Fair Trade Practices

The Commission is empowered to promulgate and enforce reasonable rules and regulations covering fair trade practices. Some provisions apply to discounts, unfair or false advertising, gifts, supplying fixtures or equipment, price discrimination (more especially on the basis of brand names) and other provisions related to the transaction of business between producers, milk dealers, or handlers and retail stores in State marketing areas.

Marketing Areas and Percentage of Milk Regulated

The State is divided into 6 marketing areas, and minimum prices are fixed in each area for producers, wholesalers, and retailers: (1) Northwest--that part regulated under the Memphis, Tennessee, Federal milk marketing order; (2) Northeast --all of North Mississippi not regulated by the Memphis marketing order; (3) Mississippi Delta--22 counties and parts of 3 others along the Mississippi River; (4) Central Mississippi--29 South and Central Mississippi counties; (5) Gulf Coast --8 Southeastern counties; (6) Southwest Mississippi--3 Southwestern counties.

State regulations cover all milk from producers in the State not sold in the New Orleans and the Memphis Federal marketing order areas, and in certain markets in Alabama. Approximately 60 percent of the Grade A milk sold in the State is

regulated by State orders. Between 90 and 95 percent of milk sold by producers in the State is regulated under State and Federal orders.

All milk sold to consumers in the State is priced under State regulation, except that sold to Federal agencies.

Source of Funds for Administration

The administration of wholesale and retail prices is financed by assessments upon distributors not to exceed 2 cents per hundredweight of all milk sales. The State administration of producer prices is financed by an assessment on the milk handler not to exceed 5 cents per hundredweight on all milk received from producers, except milk under Federal orders.

MONTANA

Standards for Establishing Prices

Basic standards used to determine producer and resale milk prices are the costs of production, processing, and delivery by reasonably efficient producers and processors in the market area.

Regulation of Fair Trade Practices

Unlawful business practices which are prohibited include the acceptance of allowances, secret rebates, and refunds; unearned discounts; giving milk and dairy products, services, or articles of any kind, except to bona fide charities; and the extension of special prices or services not available to all customers who purchase milk in like quantities under like terms and conditions.

Marketing Areas and Percentage of Milk Regulated

Montana is divided into 12 marketing areas, which cover the entire State. All the milk used for fluid purposes in the State is regulated by official orders.

Source of Funds for Administration

Funds for administration are derived from assessments of 2.5 cents per hundredweight of milk sold, levied upon both producers and distributors, and 5 cents per hundredweight levied on producers-distributors.

NEVADA

Standards for Establishing Prices

Prices are established on the basis of cost studies conducted by the Dairy Commission, and distributors are required to file cost information on a uniform basis. The Commission has authority to regulate minimum prices at all levels. Factors considered include cost of production, return on capital investment, transportation, cost of compliance with health regulations, and current and prospective supply of and demand for fluid milk and fluid cream.

Regulation of Fair Trade Practices

The Nevada statutes specifically call for elimination of unfair and destructive trade practices, such as: Extension of special services, secret rebates, unearned